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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

In re  
ACACIA MEDIA TECHNOLOGIES  
CORPORATION ) Case No. 05 CV 01114 JW  
                 ) MDL No. 1665  
                 )  
                 ) **ACACIA'S UNOPPOSED MOTION FOR**  
                 ) **ADMINISTRATIVE LEAVE FOR ORDER**  
                 ) **CORRECTING THE COURT'S ORDER**  
                 ) **GRANTING DEFENDANTS' MOTIONS**  
                 ) **FOR SUMMARY JUDGMENT**

1      **I. INTRODUCTION**

2            Acacia seeks an Order correcting portions of the Court's Order Granting Defendants'  
3 Motions for Summary Judgment (Docket Item No. 350) ("Order") with respect to the identity of the  
4 patent claims that were at issue and with respect to the identity of the patent claims that should have  
5 been subject to the ruling set forth in the Order. Acacia has communicated the substance of this  
6 Motion to Defendants' counsel and it has been communicated to Acacia's counsel that the Round 1  
7 Defendants represented by Fish & Richardson, Foley & Lardner and Hecker & Harriman, the  
8 Satellite Defendants, the Round 2 Cable Defendants, and the Round 3 Defendants do not oppose this  
9 Motion.

10          In anticipation of the issuance of a corrected Order, the parties have included, in their  
11 [Proposed] Judgment in the second "WHEREAS" paragraph on page 1, when describing the Order,  
12 the word "Corrected" in brackets and a blank space in the "D.I. No."

13      **II. GROUNDS FOR RELIEF**

14          In the Order, the Court, referring to Exhibit B of the Declaration of David Benyacar in  
15 Support of Round 3 Defendants' Motions for Summary Judgment of Invalidity, stated at 3:3-8 that:

16            "At present, the following claims remain at issue:

17            Claims 19-22 and 41-46 of the '992 Patent;

18            Claims 14-19 of the '863 Patent;

19            Claims 1-42 of the '702 Patent;

20            Claims 4, 6-8 and 11 of the '720 Patent; and

21            Claims 2 and 5 of the '275 Patent."

22          The Court's description of the patent claims that were at issue at the time of the Order is in  
23 error, because, subsequent to Exhibit B to the Benyacar Declaration, Acacia withdrew a number of  
24 claims and provided Defendants with covenants not to sue on those claims. On June 13, 2008, the  
25 Court entered a Stipulated Covenant Not To Sue in which Acacia provided all Defendants with a  
26 covenant not to sue on claims 19-22, 23, 24, 42-44, 47, 48, 49, 51, 52, and 53 of the '992 patent;  
27 claims 2 and 5 of the '275 patent; claims 14-16 of the '863 patent; and claims 4 and 6-8 of the '720  
28 patent. (Docket Item No. 285). Acacia also separately provided the Round 1 Defendants with a

1 covenant not to sue on claims 1-18 of the ‘992 patent which the Court entered on June 13, 2008.  
2 (Docket Item No. 286).

3 As a result of Acacia’s covenants not to sue, only the following claims were at issue at the  
4 time of the Order and only the following claims were addressed in the Defendants’ Motions for  
5 Summary Judgment: Claims 41, 45, and 46 of the ‘992 patent; Claims 17-19 of the ‘863 patent;  
6 Claim 11 of the ‘720 patent; and Claims 1-42 of the ‘702 patent. No claim of the ‘275 patent was  
7 being asserted by Acacia against any Defendant at that time or was addressed in Defendants’  
8 Motions for Summary Judgment.

9 Thus, the Court’s decision granting summary judgment at 7:22-24 should have read as  
10 follows: “Accordingly, the Court GRANTS Defendants’ Motions for Summary Judgment that  
11 Claims 41, 45, and 46 of the ‘992 Patent; Claims 17-19 of the ‘863 patent; Claim 11 of the ‘720  
12 patent; and Claims 1-42 of the ‘702 patent.”

13 **III. RELIEF SOUGHT**

14 Accordingly, a corrected Order should be issued by the Court with the following revisions to  
15 the original Order:

16 1. The list of claims at 3:4-8 should be deleted and replaced with the following list of  
17 claims:

18 “Claims 41, 45, and 46 of the ‘992 patent;  
19 Claims 17-19 of the ‘863 patent;  
20 Claim 11 of the ‘720 patent; and  
21 Claims 1-42 of the ‘702 patent.”

22 2. The citation of support for the list of claims at issue at 3:9-10 should be revised to  
23 add the Stipulated Covenants Not To Sue (shown in underline to indicate the adding  
24 information) as follows:

25 “(See Declaration of David Benyacar in Support of Round 3 Defendants’  
26 Motions for Summary Judgment of Invalidity, Ex. B, hereafter, “Benyacar  
27 Decl.,” Docket Item No. 293; Stipulated Covenants Not To Sue, Docket  
28 Item Nos. 285 and 286.)”

1           3. The sentence at 7:22-24 should be deleted and replaced with the following sentence:

2           “Accordingly, the Court GRANTS Defendants’ Motions for Summary  
3           Judgment that Claims 41, 45, and 46 of the ‘992 Patent; Claims 17-19 of  
4           the ‘863 patent; Claim 11 of the ‘720 patent; and Claims 1-42 of the ‘702  
5           patent are invalid.”

6           Dated: October 9, 2009

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